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6 MARICELA LONG

7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION

11 UNITED STATES OF AMERICA,) NO. CR 13-00819-PA-7
12)
Plaintiff,)
13)
v.) DEFENDANT MARICELA LONG'S
14) MOTION TO DISMISS INDICTMENT
THOMPSON, et. al.,) FOR OUTRAGEOUS GOVERNMENT
15) CONDUCT; EXHIBITS
Defendant.)
16)
Hearing Date: April 14, 2014
17)
Hearing Time: 3:00 p.m.
18

19 Defendant, Maricela Long, by and through her counsel of
20 record, Angel Navarro, Attorney at Law, hereby submits the enclosed
21 motion to dismiss the Indictment based on outrageous government
22 conduct. The grounds of this motion are the Due Process Clause of

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1 the Fifth Amendment and the Court's own inherent supervisory power
2 over the administration of justice.

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5 Respectfully submitted,

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7 DATED: March 16, 2014

8 By _____/s/
9 ANGEL NAVARRO
10 Attorney at Law
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I

INTRODUCTION

The use of undercover tactics, including jail house informants and undercover agents, is nothing new to the criminal justice system. Courts have historically granted much leeway to the government, as the government fights crime. The Supreme Court has stated more than once that the law enforcement community can use undercover investigations to ferret out suspected criminal behavior. Weatherford v. Bursey, 429 U.S. 545, 557 (1976). But contrary to what the Federal Bureau of Investigations (FBI) or what federal prosecutors may think or profess to individual grand juries, the federal government's power is not limitless. The struggle between the power of the federal government and individual rights goes way back to the days of Thomas Jefferson and his disagreements with John Adams, Alexander Hamilton and the Federalists.

The Courts serve to make sure that the government's actions against its own citizens do not result in individual rights being violated. It is in this context that the Court can dismiss a criminal prosecution when the government's own conduct is so outrageous that a dismissal of the underlying charges is the appropriate remedy. Ms. Long submits to this Court that the "totality" of the government's conduct in this case warrants a dismissal of the underlying charges.

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II

STATEMENT OF FACTS

Maricela Long is a 23-year veteran of the Los Angeles Sheriffs Department (LASD). In many ways, her story is a reflection of what the LASD's mission is all about. Ms. Long grew up in Los Angeles, California. She attended local schools and joined the LASD first as a civilian employee. As a woman of color, she was on a path not followed by many women like her. She became a deputy sheriff and she worked her way through the LASD. She became a sergeant within the department. Her hard work and dedication landed what she thought was a much coveted position. In early August of 2011, she was assigned to work for the Internal Criminal Investigations Bureau (ICIB) of the LASD. Ms. Long was going to be investigating crimes committed by deputies and other criminal activity committed within the LASD.

Unbeknownst to Ms. Long, she was about to walk into a firestorm. At the time that Ms. Long was assigned to work for ICIB, the FBI was investigating alleged civil rights violations at the Los Angeles Mens Central Jail (MCJ). In an apparent effort to bolster its operation within the MCJ, the FBI decided to introduce a cell phone into the MCJ. To be more specific, the FBI had decided that it would introduce a cell phone into the MCJ without notifying the LASD. It appears that the federal government ignored its own guidelines and policies in introducing a cell phone into

1 the MCJ.¹ The FBI operation involved relying on a jail house
2 informant. And not just any jail house informant. A jail
3 informant who had been sentenced to 423 years in state prison. It
4 appears that the government determined that it was a wise decision
5 to give a cell phone to a jail house informant and allow the
6 informant to keep the cell phone within the MCJ for extended
7 periods of time without any real supervision from the FBI.

8
9 The government's conduct was soon discovered by LASD deputies
10 assigned to the jail. The LASD also quickly determined that the
11 seized telephone had been used to call the civil rights division of
12 the local FBI office. In addition, the LASD examined the cell
13 phone and found what appeared to be evidence of narcotics. To top
14 this off, the jail house informant began to make claims that he had
15 been purchasing narcotics from corrupt LASD personnel.
16 Furthermore, the jail house informant eventually admitted that the
17 cell phone had been provided to him by his FBI handlers.

18
19 At this point in the investigation, the LASD "circled the
20 wagons". The top brass within the LASD conducted an invitation-
21 only meeting at sheriff's headquarters (Ms. Long was not invited to
22 attend the meeting). After this meeting, the sheriff's department
23 set up a task force to investigate the so-called FBI cell phone.
24 This was not a typical situation where an inmate had been found
25 with a cell phone. Jails throughout the country are constantly
26 dealing with inmates who are found with cell phones within the

27
28

¹A copy of the Attorney General's Guidelines Regarding The Use
Of Confidential Informants has been attached as Exhibit A.

1 walls of the jail.

2

3 As this Court can imagine, the possession of cell phones by
4 inmates poses a direct threat to the safety and well-being of law
5 enforcement personnel, jail house staff, inmates, and society as a
6 whole. When it turned out that the seized cell phone was connected
7 to the FBI, the plot only thickened. As a direct result of the
8 LASD's investigation into the "FBI cell phone", the government
9 decided in its infinite wisdom that the LASD had conspired to
10 interfere with the FBI's investigation. The United States Attorney
11 for our district did its own investigation and it determined that
12 the LASD was not simply engaging in civil rights violations, but
13 that the LASD was making efforts to interfere with the FBI
14 investigations at the MCJ.

15

16 The government (this time the United States Attorneys Office)
17 then decided that they too would ignore its own written protocol
18 and rules by having actual targets testify before a federal grand
19 jury.² Four of the defendants in this case were called before the
20 grand jury and not one of them was ever informed that they were
21 targets or subjects of the federal investigation. Furthermore,
22 during the grand jury sessions associated with Ms. Long and her co-
23 defendants, the government provided incorrect statements of the law
24 with respect to important legal concepts such as the Supremacy
25 Clause to both witnesses and members of the grand jury.

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28 ²A copy of the United States Attorneys' Manual (USAM) will be
filed in connection with a separate motion filed by a co-defendant.

III

LEGAL ARGUMENT

Outrageous government conduct takes place when the actions of the government (typically through the use of informants or law enforcement officers) is "so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction." United States v. Russell, 411 U.S. 423, 431-32, 93 S.Ct. 1637, 36 L.Ed. 2d 366 (1973). Ms. Long recognizes that dismissals on outrageous government conduct grounds are limited to "extreme cases" in which the defendant can demonstrate that the government's conduct "violates fundamental fairness" and is "so grossly shocking and so outrageous as to violate the universal sense of justice." United States v. Stinson, 647 F. 3d 1196, 1209 (9th Cir. 2011) In making its determination, the Court is required to focus on the government's actions, not the defendant's actions. United States v. Restrepo, 930 F. 2d 705, 712 (9th Cir. 1991) Ms. Long submits to this Court that this case is so unique that the most appropriate remedy is for this Court to dismiss based on the totality of the government's conduct.

The Ninth Circuit has set forth a combination of factors test to determine if the government's actions in any one particular case warrant dismissal of criminal charges. In the 2013 decision of United States v. Black, the Court of Appeals identified six factors which must be analyzed in determining whether the government's conduct is outrageous enough to result in a dismissal. United States v. Black, 733 F. 3d 294, 303-304 (9th Cir. 2013).

1 The factors are as follows: (1) known criminal
2 characteristics of the defendants; (2) individualized suspicion of
3 the defendants; (3) the government's role in creating the crime of
4 conviction; (4) the government's encouragement of the defendants to
5 commit the offense conduct; (5) the nature of the government's
6 participation in the offense conduct; and (6) the nature of the
7 crime being pursued and necessity for the actions taken in light of
8 the nature of the criminal enterprise at issue.

9
10 A. KNOWN CRIMINAL CHARACTERISTICS OF THE DEFENDANTS:

11
12 The first of the six factors ask that the Court consider who
13 the particular defendants are. This factor focuses on the
14 particular defendant's background or propensity to commit crimes.
15 This factor is clearly not meant to apply to Ms. Long or any of her
16 co-defendants. Every defendant in this case is a respected member
17 of the law enforcement community. None of the charged defendants
18 in this case was a target of any civil rights violations within the
19 MCJ. Ms. Long and her co-defendants were all experienced law
20 enforcement personnel. There was nothing about any of the
21 defendants in this case that would have warranted a specific
22 investigation by the federal government.

23
24 B. INDIVIDUALIZED SUSPICION OF THE DEFENDANTS:

25
26 In this investigation, there was no reason whatsoever to
27 suspect that Ms. Long or her co-defendants were suspected of being
28 involved in any criminal activity. From the discovery provided by

1 the government, it appears that the government was investigating
2 alleged violations of civil rights within the MCJ. Ms. Long, and
3 co-defendants Leavins and Craig, did not even work at the jail.
4 Ms. Long, and co-defendants Leavins and Craig were all members of
5 the ICIB unit of the LASD. This unit had nothing to do with the
6 day to day activities within the MCJ. There was nothing about Ms.
7 Long or her co-defendants which would have cause the FBI to focus
8 on them as part of the civil rights investigation.

9
10 C. THE GOVERNMENT'S ROLE IN CREATING THE CRIME OF CONVICTION:

11
12 The allegations against Ms. Long and her co-defendants focus
13 on an alleged conspiracy to obstruct an FBI investigation.
14 According to the Indictment, Ms. Long and her co-defendants
15 attempted to obstruct an FBI investigation and then lied to the
16 FBI. On the other hand, but for the government's recklessness in
17 supplying a cell phone to a questionable jail house informant, the
18 LASD would never have set up a special task force in this case.

19
20 The government violated or ignored its own internal policies
21 by breaking the law and introducing a prohibited item into the MCJ.
22 The government also appears to have ignored its own internal
23 protocol in the way the jail house informant was handled in this
24 case. The Attorney General manual for the use of "high Level
25 Confidential Informant(s)" (p. 3 of Exhibit A), sets forth that
26 individuals like Anthony Brown must be supervised under very strict
27 guidelines. From the information provided by the government in
28 this case, it appears that the FBI failed to follow the Attorney

1 General's own guidelines. For example, it does not appear as if
2 the FBI ever completed an Initial Suitability Determination Report
3 as required by the Attorney General manual (Exhibit A, p. 8).
4

5 In addition, high level confidential informants like Anthony
6 Brown are subject to special approval rules (See Exhibit A, p. 13)
7 Perhaps more troubling is the undisputed fact that the jail house
8 informant in this case was a sentenced state prisoner.³ The
9 Attorney General manual specifically states:

10 Prior to utilizing a state or local prisoner, probationer,
11 parolee, or supervised releasee as a CI, a Field Manager of a
12 JLEA shall determine if the use of that person in such a
13 capacity would violate the terms and conditions of the
14 person's incarceration, probation, parole or supervised
15 release. If the Field Manager has reason to believe that it
16 would violate such terms and conditions, prior to using the
17 person as a CI, the Field Manager or his or her designee must
18 obtain the permission of a state or local prison, probation,
19 parole, or supervised release official with authority to
20 grant such permission, which permission shall be documented
21 in the CI's files. If such permission is denied or it is
22 inappropriate for operational reasons to contact the
23 appropriate state or local official, the JLEA may seek to
24 obtain authorization for the use of such individual as a CI
25 from the state or local Court then responsible for the
26

27 ³It is also unclear if Anthony Brown may also be a federal
28 prisoner. The BOP website shows him to be "not in BOP custody" as
opposed to showing a release date from federal custody. See
Exhibit B.

1 individual's incarceration, probation, parole, or supervised
2 release.
3 (Exhibit A, p. 16). From the discovery provided by the government,
4 it does not appear as if anyone from within the FBI ever obtained
5 the appropriate approval from either a state court and obviously
6 not from the LASD or California Department of Corrections.
7 The government cannot simply break the law and ignore its own
8 policies and then attempt to use the Supremacy Clause to shield its
9 agents from accountability.

10

11 This case presents a unique set of facts. This case is not
12 a situation where the government was investigating any of these
13 particular defendants. Rather, the government was allegedly
14 investigating civil rights violations which were allegedly taking
15 place within the MCJ. The defendants in this case were brought
16 together as a direct result of the government's actions in
17 introducing a prohibited and dangerous item into a jail. The
18 investigation was further complicated when the jail house informant
19 was a sentenced prisoner. Furthermore, the investigation conducted
20 by the LASD in this case revealed that the informant had apparently
21 taken pictures of drugs on multiple occasions.

22

23 D. THE GOVERNMENT'S ENCOURAGEMENT OF THE DEFENDANTS TO COMMIT
24 THE OFFENSE CONDUCT:

25

26 The alleged criminal acts committed in this case came about as a
27 direct result of the federal government's questionable, reckless
28 and illegal actions. As noted above, the defendants in this case

1 are all experienced law enforcement personnel within the LASD. The
2 government could have very easily prevented this entire mess by
3 following some very simple protocol and being open with the LASD.
4

5 The government introduced a cell phone into the MCJ. The
6 cell phone was in the hands of a jail house informant. The
7 informant was a sentenced state prisoner. The LASD discovered the
8 cell phone. The LASD made efforts to reach out to the FBI through
9 proper channels with respect to the cell phone. The LASD did what
10 any good law enforcement had to do: it began to do its own internal
11 investigation of the cell phone.
12

13 The government is now claiming that members of the LASD broke
14 federal law by interfering and obstructing the investigation being
15 conducted by the FBI. The government did everything it could to
16 make sure that the LASD had to react as it did.
17

18 Equally troubling is the manner in which this federal
19 investigation was handled at the local level. Law enforcement
20 personnel were subpoenaed to testify before a federal grand jury.
21 Four of these witnesses were clearly targets of the federal
22 investigation. And yet, Ms. Long along with co-defendants Leavins,
23 Sexton, and Craig were all summoned pursuant to a court order to
24 testify before the grand jury. Such actions appear to violate the
25 defendant's Fifth and Sixth Amendment rights. The Supreme Court
26 has previously issued opinions with respect to the rights and
27 warning to be afforded to witnesses before a grand jury. See United
28 States v. Washington, 431 U.S. 174 (1977). In light of Supreme

1 Court authority, the government has implemented a USAM to deal with
2 the issue of target witnesses and the grand jury process. The
3 Attorney General has developed a policy of providing warnings to
4 targets who appear before grand juries. Several circuits have
5 issued opinions dealing with situations where targets are not
6 properly warned before they testify before a grand jury. See
7 United States v. Jacobs, 531 F. 2d 87, 88-89 (2nd Cir. 1976); United
8 States v. Crocker, 568 F. 2d 1049 (3rd Cir. 1977); United States v.
9 Pacheco-Ortiz, 889 F. 2d 301 (1st Cir. 1989).

10
11 The Ninth Circuit has also dealt with this issue, although
12 not in the context of a case like this one. In the case of United
13 States v. Jenkins, the Court was dealing with a defendant who had
14 been provided with a letter which indicated that the defendant was
15 the subject of a grand jury investigation and that the defendant
16 could become a target. Jenkins, 785 F. 2d 1387, 1395 (9th Cir.
17 1986). The Court went on to affirm the denial of a motion to
18 suppress. In the case of Ms. Long, she was never told orally or in
19 writing that she was a target of the investigation.

20
21 Of equal and perhaps greater concern is the fact that the
22 federal grand jury was incorrectly instructed with respect to legal
23 concepts such as the Supremacy Clause. And as this Court is aware,
24 the Supremacy Clause appears to be a particular focus point in this
25 case.

26 /

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1 E. THE NATURE OF THE GOVERNMENT'S PARTICIPATION IN THE OFFENSE
2 CONDUCT:

3
4 The fifth factor enumerated by the Court also illustrates
5 that the government had a central role in the alleged "offense
6 conduct". The Indictment in this case accuses Ms. Long and her co-
7 defendants of being involved in a conspiracy to interfere with an
8 FBI investigation. In addition, the Indictment accuses Ms. Long
9 and her co-defendants of lying to the FBI as well. As previously
10 noted, the alleged criminal conduct in this case came about as a
11 direct result of an FBI investigation which appears to have
12 violated FBI protocol and established FBI guidelines. Furthermore,
13 the federal investigation which resulted in the current federal
14 charges involved the use of a questionable jail house informant.

15
16 This Court should not allow the government to continue to
17 hide in the Federal Building in Westwood, California. This Court
18 must hold the federal government accountable for its actions and
19 for its inactions. The federal government, through its reckless
20 and illegal actions, forced the LASD to react in the only way that
21 the LASD could have reacted. The federal government is now
22 accusing a number of well-respected public servants of breaking the
23 law. Ms. Long and her co-defendants were simply doing their job.

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1 F. THE NATURE OF THE CRIME BEING PURSUED AND NECESSITY FOR THE
2 ACTIONS TAKEN IN LIGHT OF THE NATURE OF THE CRIMINAL
3 ENTERPRISE AT ISSUE:
4

5 This sixth and final factor also cuts in favor of Ms. Long
6 and her co-defendants. The federal government is accusing a number
7 of law enforcement members of conspiring to interfere with an FBI
8 investigation. What the government clearly lacks in this case is
9 an actual criminal enterprise.
10

11 No one can honestly state that the LASD is a criminal
12 enterprise. If in fact there are or were individual deputies who
13 were violating the civil rights of prisoners, that is a clear
14 governmental interest. But, there is nothing about any of the
15 defendants in this case which would tend to indicate that they were
16 members of a criminal enterprise.
17

18 Many times, these types of motions are brought by criminal
19 defendants who have been arrested as a result of undercover
20 operations. The defendants in the Black case for example, were
21 prosecuted as a result of a fake stash house prosecution. In the
22 present case, there does not appear to be any real connection
23 between the use of the jail house informant and the alleged civil
24 rights being committed within the MCJ.
25

26 From the evidence provided by the government, the cell phone
27 which was introduced into the MCJ was never used by the informant
28 to photograph civil rights violations. The telephone appears to

1 have been introduced in an attempt to expose a corrupt deputy.
2 There has never been a connection made between the allegedly
3 corrupt deputy and any civil rights violations. The cell phone
4 introduction appears to have been nothing more than a fishing
5 expedition.

6 IV

7 CONCLUSION

8
9 LASD Sergeant Maricela Long and her co-defendants have no
10 business being in federal court. The defendants in this case are
11 all hard-working public servants who did their job. The federal
12 government, through its reckless, questionable and illegal actions
13 has decided to charge these defendants with breaking the law. This
14 Court should remedy this situation as a result of the government's
15 outrageous conduct in this case.

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17
18 Respectfully submitted,

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20 DATED: March 16, 2014

21 By _____/s/
22 ANGEL NAVARRO
23 Attorney at Law
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